

EXHIBIT N

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

v s .

Case No.

1 : 20 - CV - 04160 - JGK

INTERNET ARCHIVE and DOES 1
through 5, inclusive.

Defendants.

VIDEOTAPED RULE 30(B)(1) AND RULE 30(B)(6)
DEPOSITION OF HACHETTE BOOK GROUP
CORPORATE DESIGNEE: SKIP DYE
Remote Zoom Proceedings
Thursday, November 18, 2021

Job No. 4867650

Reported By: Lynne Ledanois, CSR 6811

Pages 1 - 390

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

vs.

Case No.

1 : 20-cv-04160-JGK

INTERNET ARCHIVE and DOES 1
through 5, inclusive,

Defendants.

Videotaped deposition of SKIP DYE,
taken in Lewes, Delaware, commencing at
10:35 EST a.m., on Thursday, November 18,
2021 before Lynne Ledanois, Certified
Shorthand Reporter No. 6811

1 REMOTE APPEARANCES
2

3 Counsel for the Plaintiffs:

4 DAVIS WRIGHT TREMAINE LLP

5 BY: LINDA STEINMAN

6 Attorney at Law

7 4530 Wisconsin Avenue, NW

8 5th Floor

9 Washington, D.C. 20016

10 lindasteinman@dwt.com

11
12 Counsel for the Defendant Internet Archive:

13 DURIE TANGRI LLP

14 BY: JESSICA E. LANIER

15 CORYNNE MCSHERRY

16 Attorneys at Law

17 217 Leidesdorff Street

18 San Francisco, California 94111

19 jlanier@durietangri.com

20 ALSO PRESENT:

21 John MacDonnell, Videographer

22 Chelsea Gilchrist, Veritext Tech

23 Carolyn Foley, In-House Counsel Penguin Random
24 House

1 website to their, as they call them, 11:08AM
2 patrons? 11:08AM
3 Q Yes. 11:08AM
4 A Yes, I'm aware of the 11:08AM
5 lending library. 11:08AM
6 Q Okay. Is PRH aware of any 11:08AM
7 quantifiable effect that the Internet 11:08AM
8 Archive's digital lending library has 11:08AM
9 had on PRH's revenues from books? 11:08AM
10 A I'm aware of, as I work with 11:09AM
11 my customers, I know that they -- many 11:09AM
12 of my libraries that we work with also 11:09AM
13 offer and reference the Internet 11:09AM
14 Archive, that their books are 11:09AM
15 available there. 11:09AM
16 So I'm aware of the lending 11:09AM
17 and it does affect our sales because 11:09AM
18 then the libraries don't purchase 11:09AM
19 those e-Books from us. 11:09AM
20 Q Okay. When you say 11:09AM
21 "customers," what are you referring 11:09AM
22 to? 11:09AM
23 A The aggregators act as our 11:09AM
24 party to sell to libraries. So the 11:09AM
25 libraries would be the customers to 11:09AM

1	the aggregators.	11:09AM
2	Q Got it. So when you used	11:09AM
3	"customers" in your previous answer,	11:09AM
4	were you referring to aggregators or	11:09AM
5	libraries?	11:09AM
6	A I'm referring to the	11:09AM
7	aggregators working with the	11:09AM
8	libraries.	11:10AM
9	Q Got it. So you said a	11:10AM
10	moment ago that you're aware -- I'm	11:10AM
11	just reading the transcript here, that	11:10AM
12	you're aware of the lending and it	11:10AM
13	does affect our sales because the	11:10AM
14	libraries don't purchase those e-Books	11:10AM
15	from us.	11:10AM
16	Is that documented, that	11:10AM
17	effect of sales that you've observed?	11:10AM
18	A Documented -- do you -- I'm	11:10AM
19	sorry, what do you mean by	11:10AM
20	"documented"?	11:10AM
21	Q I mean, is this -- let me	11:10AM
22	back up a little bit.	11:10AM
23	Is this the kind of thing	11:10AM
24	that is anecdotally reported to you or	11:10AM
25	is there data to support the statement	11:10AM

1	relationship with Open	12:15 PM
2	Library/Internet Archive" is the rest	12:15 PM
3	of that sentence.	12:15 PM
4	Q Right. So do you recall	12:15 PM
5	what -- do you recall what their view	12:15 PM
6	of ownership was, DPLA, as you	12:15 PM
7	described in this email?	12:15 PM
8	A At the time, I know -- I	12:15 PM
9	don't know how it's described in this	12:15 PM
10	email. I know that their view at this	12:16 PM
11	time, they had an ownership view,	12:16 PM
12	meaning the library bought the e-Book,	12:16 PM
13	not licensed the e-Book.	12:16 PM
14	And we don't sell directly	12:16 PM
15	to libraries. We sell to aggregators,	12:16 PM
16	who then license our content to them.	12:16 PM
17	So they wanted to bypass that	12:16 PM
18	relationship with stuff.	12:16 PM
19	Q And PRH's position is that	12:16 PM
20	when an e-Book is conveyed to a	12:16 PM
21	library, the library does not own that	12:16 PM
22	e-Book; is that right?	12:16 PM
23	A The library has a license	12:16 PM
24	relationship between their aggregator	12:16 PM
25	and them, not with Penguin Random	12:16 PM

1	Internet Archive instead of going	12:38 PM
2	through their legitimate means.	12:38 PM
3	Q Does PRH have any data to	12:38 PM
4	suggest that fluctuations in	12:38 PM
5	circulation or revenue are tied to	12:38 PM
6	titles being available on the Internet	12:38 PM
7	Archive?	12:38 PM
8	MS. STEINMAN: Objection.	12:38 PM
9	Go ahead.	12:38 PM
10	THE WITNESS: It's just	12:39 PM
11	common knowledge. If it's	12:39 PM
12	available someplace else -- if	12:39 PM
13	somebody is looking for it and	12:39 PM
14	it's available someplace else for	12:39 PM
15	them to check out, because it's	12:39 PM
16	not available from the library, it	12:39 PM
17	stands to reason that people who	12:39 PM
18	are wanting to read it will	12:39 PM
19	download it where they can get it.	12:39 PM
20	That patron, if they can't	12:39 PM
21	find it on their library's	12:39 PM
22	website, will go to Internet	12:39 PM
23	Archive and see it there and	12:39 PM
24	download it.	12:39 PM
25		

1 BY MS. LANIER: 12:39PM
2 Q Do you have evidence that 12:39PM
3 that occurred? 12:39PM
4 A I would say it's common 12:39PM
5 sense that if a reader wants to read, 12:39PM
6 they're going to try to find how to 12:39PM
7 read the book. 12:39PM
8 Q Okay. So you don't have 12:39PM
9 evidence then apart from common sense? 12:39PM
10 MS. STEINMAN: Objection. 12:39PM
11 Go ahead, Skip. 12:39PM
12 THE WITNESS: I don't 12:39PM
13 have -- I don't have any evidence. 12:39PM
14 BY MS. LANIER: 12:39PM
15 Q We sort of started talking 12:39PM
16 about this a little bit, but I do want 12:39PM
17 to talk about other factors that might 12:40PM
18 affect how a title would perform both 12:40PM
19 in terms of revenue and circulation. 12:40PM
20 Might the fact that -- I'll 12:40PM
21 list some ideas. You tell me if that 12:40PM
22 might affect a title or not. 12:40PM
23 The identity of the author 12:40PM
24 and whether the author has published a 12:40PM
25 book before? 12:40PM

1 about the University of Georgia, they 12:52PM
2 have academic libraries at the 12:52PM
3 University of Georgia. 12:52PM
4 12:52PM
5 So those libraries are 12:52PM
6 affiliated with an academic school of 12:52PM
7 learning. Usually they are funded by 12:52PM
8 the school and/or state depending upon 12:52PM
9 the type of institution they are, the 12:52PM
10 type of academic library that they 12:52PM
11 are. 12:53PM
12 12:53PM
13 Q And last but certainly not 12:53PM
14 least, what is a school library? 12:53PM
15 12:53PM
16 A A school library is most 12:53PM
17 associated with K through 12. But it 12:53PM
18 could be pre-K as well. 12:53PM
19 12:53PM
20 This is a public school 12:53PM
21 scenario where you have children who 12:53PM
22 go to school and it's a library that's 12:53PM
23 located in that school or libraries. 12:53PM
24 The school can have multiple libraries 12:53PM
25 that's in their school system. 12:53PM
26 12:53PM
27 Q Okay. Are you familiar with 12:53PM
28 the term "perpetual access model"? 12:53PM
29 12:53PM
30 A Yes, I am. 12:53PM
31 12:53PM
32 Q What is that? 12:53PM

1	A Perpetual access model is	12:53 PM
2	where the library in our case, the	12:53 PM
3	institution would actually work with	12:53 PM
4	an aggregator and then they would	12:53 PM
5	purchase the license right to have	12:53 PM
6	that in perpetuity to use and to	12:53 PM
7	license one book at a time.	12:53 PM
8	Q And it is a license, it is	12:54 PM
9	not a sale in that the library does	12:54 PM
10	not own the e-Book copy?	12:54 PM
11	A Again, the relationship is	12:54 PM
12	not between me and that library, it's	12:54 PM
13	between the aggregator and that	12:54 PM
14	library, so the aggregator's	12:54 PM
15	relationship is what they have.	12:54 PM
16	And most often, as I	12:54 PM
17	understand it, it is a license	12:54 PM
18	relationship that's made up of many	12:54 PM
19	responsibilities related to that, not	12:54 PM
20	only the rendering of the book.	12:54 PM
21	Q Under the perpetual access	12:54 PM
22	model, does the aggregator own the	12:54 PM
23	copy of the e-Book?	12:54 PM
24	MS. STEINMAN: Objection.	12:54 PM
25	THE WITNESS: So the	12:54 PM

1 left? 7:19PM

2 MS. LANIER: I'm trying to 7:19PM

3 get through my questions. But 7:19PM

4 it's difficult with the repeated 7:19PM

5 standing objections, so -- 7:19PM

6 MS. STEINMAN: In terms of 7:19PM

7 the official count here, how much 7:19PM

8 time do we have left? I'm very 7:19PM

9 hungry. 7:19PM

10 VIDEOGRAPHER: The time on 7:19PM

11 the record as of now is six hours, 7:19PM

12 45 minutes. 7:19PM

13 MS. LANIER: Excellent. 7:19PM

14 Q Okay. Are you familiar with 7:19PM

15 the term "big five" in publishing? 7:19PM

16 A I'm sorry, Jesse, you broke 7:19PM

17 up at the end of that phrase. Did you 7:19PM

18 say -- what did you say? Repeat, 7:19PM

19 please. 7:19PM

20 Q No problem. Are you 7:19PM

21 familiar with the term "big five" in 7:19PM

22 publishing? 7:19PM

23 A I'm familiar with that term. 7:20PM

24 Q What does that term mean? 7:20PM

25 A The term means the big five 7:20PM

1	largest publishers in the United	7:20PM
2	States.	7:20PM
3	Q Do you know who are the big	7:20PM
4	five?	7:20PM
5	A It would be Penguin Random	7:20PM
6	House, Hachette, Macmillan,	7:20PM
7	HarperCollins and Simon & Schuster.	7:20PM
8	Q Have you heard publishers	7:20PM
9	who are not part of that group	7:20PM
10	referred to as a farm team?	7:20PM
11	A Excuse me?	7:20PM
12	Q Have you heard from the	7:20PM
13	publishers who are not part of the big	7:20PM
14	five referred to as a farm team?	7:20PM
15	A No, I have not heard that.	7:20PM
16	Q Okay. Do you have any -- do	7:20PM
17	you have any concerns about this	7:21PM
18	merger if it goes through?	7:21PM
19	MS. STEINMAN: Objection.	7:21PM
20	Mr. Dye, have you had	7:21PM
21	communications with counsel on	7:21PM
22	this subject?	7:21PM
23	THE WITNESS: I had	7:21PM
24	communications with counsel --	7:21PM
25	with counsel on this subject.	7:21PM

1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of
3 California, do hereby certify:

4 That the foregoing proceedings were
5 taken before me at the time and place herein
6 set forth; that a record of the proceedings
7 was made by me using machine shorthand which
8 was thereafter transcribed under my
9 direction; that the foregoing transcript is a
10 true record of the testimony given.

11 Further, that if the foregoing
12 pertains to the original transcript of a
13 deposition in a Federal Case, before
14 completion of the proceedings, review of the
15 transcript [X] was [] wasn't requested.

16 I further certify I am neither
17 financially interested in the action nor a
18 relative or employee of any attorney or party
19 to this action.

20 IN WITNESS WHEREOF, I have this
21 date subscribed my name.

22 Dated: 11/22/2021

23 
24

25 LYNNE MARIE LEDANOIS

CSR No. 6811